IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 190 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAMMEDARIFABDULHAFIZQURESHI - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SOEB R BHOHARIA for Applicant(s) : 1,
MR KC SHAH ADDL PP for Respondent(s) : 1,
MR CJ VIN for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 05/10/2005

ORAL JUDGMENT

1.Rule. Mr. K.C. Shah, learned Addl.P.P. waives service of Rule on behalf of respondent No. 1 State and Mr. M.B. Gohil for Mr. Vin, learned advocate waives service of Rule on behalf of respondent No. 2 Bank. With the consent of all the learned advocates, matter is taken up for final disposal.

2. The petitioner has preferred this petition for release of muddamal motor truck bearing Registration No. RJ-19-G-3892, which was seized by the Modasa Town Police Station for the offence under Section 11(d)(e)(f) of the Prevention of Cruelty to Animal Act and under Section 5, 6 and 8 of the Bombay Animal Preservation Act, 1954 and under Section 279 of the Indian Penal Code and under Sections 177, 184, 179(1), 192 of the Motor Vehicle Act. The petitioner has challenged the order of the learned Judicial Magistrate First Class at Modasa dated 19.1.2005 and learned District and Sessions Judge, Sabarkantha at Himmatnagar dated 15.2.2005 in Criminal Revision Application No. 7 of 2005.

3. The petitioner made an application before the

learned Judicial Magistrate First Class, Modasa for releasing his truck on 12.1.2005 and the learned Magistrate has rejected the application vide order dated 19.1.2005. Being aggrieved by the said order, the petitioner preferred Criminal Revision Application No 7 of 2005 before the learned additional Sessions Judge, Sabarkantha District, Himmatnagar. The revisional court has also dismissed the matter on the ground that cruelty to animals was evident in the way they were loaded in the subject truck. The petitioner has preferred this petition under Article 226 of the Constitution of India challenging the impugned order dated 15.2.2005.

4. It is submitted on behalf of the petitioner that impugned orders of trial Court and revisional court deserves to be quashed and set aside and muddamal truck deserves to be released. The muddamal truck can always be produced as and when the same is required before the trial Court. He submits that the muddamal truck lying as muddamal in the police station would not serve any useful purpose and also

submits that if the vehicle is not put to proper run, it is likely to be rendered useless and the custody is sought only during the pendency of the trial. He has also submitted that the petitioner is bound to abide by order that may be passed finally in the trial and therefore, the interim custody of the motor truck shall be given to the petitioner. Learned counsel for the petitioner has relied upon the decision of the Apex Court in case of **SUNDARBHAI AMBALAL DESAI VS. STATE OF GUJARAT,** reported in 2003(2) p.1337, wherein, the Apex Court has also laid down that the muddamal may be released on certain terms and conditions so as to procure its availability during the trial. Keeping the muddamal in the custody of police is not likely to serve any useful purpose. He has also relied on the another judgment of the Apex Court in case of **RAJENDRA PRASAD VS. STATE OF BIHAR AND ANOTHER,** reported in 2001 CRI.L.J.4946, wherein also, the Apex Court has observed that the interim custody of the vehicle could be ordered to be given to the owner of the vehicle with appropriate

condition so that as and when the vehicle is required during trial, the same be procured.

5. The vehicle is hypothecated to the Centurion Bank Limited and therefore, the Bank, on coming to know about the seizure of truck, made an application before this court being Criminal Misc. Application No. 10254 of 2005 in Special Criminal Application No. 190 of 2005 for impleading the Bank as party respondent and the same was granted by this court vide order dated 13.9.2005. Learned counsel Shri Gohil for the Bank submits that as per the instructions, after seizure of the vehicle, the present petitioner has failed in making the regular payment of the loan installment. He produces on record the hypothecation deed dated 16.7.2002 and statement showing the outstanding dues upto 16.8.2005. Both these documents are taken on record. Shri Gohil submits that the Bank is entitled to recover the possession of the truck from the petitioner under agreement with the petitioner. Shri Gohil, learned advocate for the respondent No. 2 and Shri Bhoharia, learned

advocate for the petitioner, jointly submit that the vehicle be released to the Bank so that Bank can furnish appropriate security for making the vehicle available as and when the vehicle is required during the trial. Shri Gohil, learned counsel for the Bank submits that Bank is ready and willing to furnish bank guarantee before the appropriate trial Court for obtaining interim custody of the vehicle in question and the Bank guarantee for Rs. 5 lacs may suffice to secure the availability of the vehicle during trial. Shri Gohil has submitted that the interim custody is requested by the Bank with a clear understanding that the Bank shall not alienate the subject motor vehicle in any way nor would it be encumbered or sold or transferred or mortgaged, and the same would be made available to the court as and when required during trial with a notice of 10 days.

6. Shri Bhoharia, learned advocate for the petitioner submits on instructions from his client that his client has no objection if the custody of the muddamal truck is given to the Bank, however, he

makes a request that in case, petitioner pays up dues to the Bank, then, he may be given liberty to approach the trial Court for getting custody of the truck from the Bank on filing appropriate application.

7. Shri Shah, learned Addl.P.P. submits that interim custody of the truck, as prayed for could be granted on strictest condition so as to procure availability of the truck as and when required during trial. Shri Shah could not controvert the contention of learned counsel for the petitioner in light of the Apex Court observation cited herein above.

8. In view of this, the court is inclined to exercise its extra ordinary jurisdiction and ordered to release the truck by way of interim custody to the respondent No. 2 Bank as the petitioner original registered truck owner has no objection to that on the following conditions:-

(a) The bank shall before getting the truck released on interim custody furnishes bank

guarantee of Rs. 5 lacs to the trial Court initially for the period of 2 years and if the trial is not over, then the same may be extended till the completion of the trial;

(b) The responsible officer from the Bank i.e. the officer not below the rank of Branch Manager, shall file an undertaking before the court that the truck shall not be alienated in any way nor would it be encumbered or sold or transferred or mortgaged to any one during the pendency of the trial and vehicle shall be made available as and when required during trial with a notice of 10 days;

(c)The petitioner original owner will be at liberty to file an application before the trial Court if he is paying up dues to the Bank for getting custody of the truck from the Bank;

(d) that the said vehicle shall be preserved in good condition by the respondent Bank;

(e) that the respondent no. 2 Bank shall not permit any misuse of the said vehicle whenever it is put to motion;

(f) that the said vehicle shall be produced before the Court as and when it is required by the trial Court even in pursuance of application filed by the State;

(g) that the respondent Bank shall not use the said vehicle for any illegal purpose and shall not permit the user thereof for illegal purpose;

(h) that on breach of any of the above conditions, the investigating officer shall be at liberty to re-seize the said vehicle;

9. This order is only for interim custody of the vehicle and it is made clear that this order shall have no adverse impact upon the application, if any, made for the confiscation / re-seize.

10. The petition is partly allowed. Rule is made absolute to the above said extent. Direct service is permitted to all the parties.

(S.R.BRAHMBHATT, J.)

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